

REMARKS

Claims 1-7 and 10-17 are pending and under consideration. Claims 8-9 and 18 are withdrawn from consideration.

The rejections under 35 U.S.C. § 103 are respectfully traversed.

With respect to Nishina '771, this reference does not disclose the water tanks to supply water into the grill pipes. Instead, the water goes from tank parts 2 to bone parts 4. The grill 1 is a distinct element from the bone parts 4 that is below the grill 1.

With respect to Nishina '007, this reference does not disclose the water tanks are connected to both ends of the grill pipes. Instead, the grill 3 is mounted "on" the tank 2. Being mounted "on" the tank 2 is distinct from tanks being connected to ends of the grill pipes.

With respect to Nishina 440, this reference does not disclose the water tanks are connected to both ends of the grill pipes. Instead, the water tank 2 is below the pipe-like elements.

Finally, with respect to Kondo, this reference does not disclose the water tanks to supply water into the grill pipes. Instead, this reference discloses that the water tanks 2, 3 are heated to heat water inside and metal pipes 7 are thus heated. However, there is no disclosure that the metal pipes 7 are heated by heated water passing therethrough. The heat could conceivably be transferred by the contact between the tanks 2, 3 and the metal pipes 7.

The Examiner states that the use of resin as a material for water containers is old and well known in the art. The Applicant respectfully traverses the Examiner's statement and demands the Examiner produce authority for the statement. The Applicant specifically points out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention. See M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. See M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Accordingly, withdrawal of the rejections is requested.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

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